

**Submission
No 17**

**INQUIRY INTO PROTECTIONS FOR PEOPLE WHO
MAKE VOLUNTARY DISCLOSURES TO THE
INDEPENDENT COMMISSION AGAINST
CORRUPTION**

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2nd June 2017

Mr Damien Tudehope MP
The Chair
Joint Committee of the ICAC
NSW Parliament House
6 Macquarie Street
Sydney NSW 2000

Dear Mr Tudehope MP

**RE: SUBMISSION TO INQUIRY INTO PROTECTION FOR PEOPLE WHO MAKE
VOLUNTARY DISCLOSURES TO THE ICAC**

The Rule of Law Institute of Australia is an independent, non-partisan, not-for-profit body formed to promote and uphold the rule of law in Australia. The Patron of the Institute is The Honourable James Spigelman AC QC, and the Governing Committee includes Malcolm Stewart, Richard McHugh SC, Professor Geoffrey de Q. Walker, David Lowy AM, Nicholas Cowdery AM QC, Professor Martin Krygier, and Hugh Morgan AC. The objectives of the Institute include promoting good governance in Australia by the rule of law, and encouraging transparency and accountability in State and Federal government.

In addition our organisation operates significant school education programs to increase trust, respect and awareness in our legal system, further information can be found at www.ruleoflaw.org.au/education

1) Rule of Law Principles and Law Reform

The Rule of Law Institute provides the following guidance on rule of law principles which must be upheld when changes to laws are made:

- All people are presumed to be innocent until proven otherwise and are entitled to remain silent and are not required to incriminate themselves.
- The judicial system is independent, impartial, open and transparent and provides a fair and prompt trial including ensuring the onus of proof is on the prosecution.
- The separation of powers between the legislature, the executive and the judiciary.
- The law is made in an open and transparent way.
- The law and its administration is subject to open and free criticism by the public.
- The law is applied equally and fairly, so that no one is above the law.
- The law is capable of being known to everyone, so that everyone can comply.
- No one is subject to any action by any government agency other than in accordance with the law and the model litigant rules.
- No one can be prosecuted, civilly or criminally, for any offence not known to the law when committed.
- No one is subject adversely to a retrospective change of the law.

2) Consistency and Equity in Protections for those who provide information to the ICAC

The protection of those who provide information in good faith about breaches of the law is as important as ensuring that a person being investigated by the ICAC receives the presumption of innocence.

The Institute notes that protections for those who make disclosures vary according to whether a person making a disclosure is a compelled witness, a person assisting the ICAC, or is making a public interest disclosure under the *Public Interest Disclosures Act 1994 (NSW)* (the PID Act), a voluntary disclosure (complaints) or anonymous complaint.

The lack of protections for voluntary disclosures raises an equity and consistency issue between different types of witnesses. Public officials are protected by the PID Act and compelled witnesses are also protected against civil, criminal and disciplinary liability. While any other member of the public seeking to make a disclosure does not have this protection available unlike in other State jurisdictions.

Hence, the Rule of Law Institute of Australia believes that voluntary disclosures

should receive the same protects and that this should be the same as whistleblowers under the Corporations Act 2001 (Part 9.4AAA). In summary this is as follows:

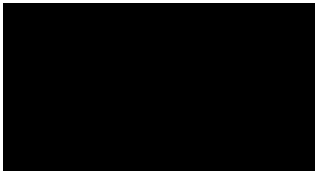
- Protection of information (unless required by law)
- Protection against litigation
- Protection from victimisation

The Institute has previously commented on the culture of the ICAC and the way in which it investigates and publicises its investigations. Consistent with the ICAC's role as an agency investigating corruption and referring cases for prosecution to the appropriate authorities - we strongly emphasise the need to ensure that the ICAC handles all disclosures with due consideration of the presumption of innocence.

Regardless of changes which might take place, accessible, plain-English, guidelines need to be provided on the ICAC's website about exactly what protections are available when making a disclosure (a table format may assist) to ensure protections are well understood and exercised.

The Rule of Law Institute of Australia thanks the Committee for the opportunity to make a submission..

Kind regards,



Peter McLean
Chief Executive Officer